

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

KENDALL JOY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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No. 2:16-cv-02367-STA-egb

**ORDER DENYING CERTIFICATE OF APPEALABILITY
AND DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS***

On August 17, 2016, the Court denied the Motion of Petitioner Kendall Joy to Vacate, Set Aside, or Correct his sentence pursuant to 28 U.S.C. § 2255 (ECF No. 8). Nearly a year later, Petitioner filed a Motion for Relief from Judgment (ECF No. 18), which the Court denied (ECF No. 19).

A petitioner who wishes to appeal the denial of a Rule 60(b) motion in a § 2255 proceeding must secure a certificate of appealability. *Martinez v. United States*, No. 17-3989, 2018 WL 1401817, at *3 (6th Cir. Feb. 26, 2018) (unpublished) (citing *Johnson v. Bell*, 605 F.3d 333, 336 (6th Cir. 2010)); *see also* 28 U.S.C. § 2253(c)(1). A COA will issue only if the petitioner “demonstrate[es] that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). When the district court denies a petition on procedural grounds, the petitioner must show “that jurists of reason would find it

debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484.

In this case, reasonable jurists would not debate the correctness of the Court’s decision to deny Petitioner’s Rule 60(b) Motion. Because any appeal by Petitioner does not deserve attention, the Court **DENIES** a COA.

Pursuant to Federal Rule of Appellate Procedure 24(a), a party seeking pauper status on appeal must first file a motion in the district court, along with a supporting affidavit. Fed. R. App. P. 24(a). But Rule 24(a) also provides that if the district court certifies that an appeal would not be taken in good faith, the prisoner must file his motion to proceed *in forma pauperis* in the appellate court. *Id.*

In this case, for the same reasons it denies a COA, the Court **CERTIFIES**, pursuant to Rule 24(a), that any appeal in this matter would not be taken in good faith. Leave to appeal *in forma pauperis* is therefore **DENIED**.

IT IS SO ORDERED.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
CHIEF UNITED STATES DISTRICT JUDGE

Date: April 2, 2018.